IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

APPEAL NO.1107 OF 2005
IN
NOTICE OF MOTION NO.49 OF 2005
IN
NOTICE NO.N/400 OF 2004

D.V.Sathe .. Appellant

v/s.

Smt.P.S.Dosani & ors. .. Respondents

Mr.P.C.Kansara i/by M/s.Kansara & Thanekar for the appellant.

CORAM : R.M.LODHA AND
D.G.KARNIK, JJ.

DATED : 8th December, 2005

P.C.

Heard Mr.P.C.Kansara, the learned counsel for the appellant.

2. The respondent No.1-Smt.P.S.Dosani filed summary suit against the present appellant. In that suit, decree came to be passed on 10.12.2002. The present appellant preferred an appeal against the said decree. The appeal has been admitted. In the application for stay, the appellant was directed to deposit the amount as per the decree and upon deposit thereof, the execution of the decree was stayed. The appellant did not deposit the amount and, thus, there is no order staying the execution of the decree in operation.

3. The judgment creditor took out insolvency notice under section 9A of the Presidency Towns Insolvency Act, 1909 (as amended by Maharashtra amendment). The present appellant took out notice of motion for recalling the said insolvency notice. By the impugned order, the learned Single Judge dismissed the notice of motion, giving rise to the present appeal.

4. Mr.Kansara, the learned counsel for the appellant urged that since the decree passed in the summary suit against the present appellant is already challenged in appeal and the said appeal has been admitted, it cannot be said that the decree passed in favour of the judgment creditor has become executable. He relied upon the judgment of the Supreme Court in the case of Sarat Chandra Roy v. Harak Chand Damani and another, AIR 1972 SC 2127.

5. It is trite principle of law that admission of appeal does not amount to stay of the decree or order, as the case may be. Because the appeal preferred by the appellant against the decree has been admitted, it cannot be said that the decree passed in favour of the judgment creditor is not executable. Moreover, in the stay application made by the appellant in the appeal, this court

directed the appellant to deposit the amount as per the decree and conditional upon them the execution of the impugned decree was stayed. Admittedly, the appellant has not deposited the amount as per the order . It is, thus, clear that there is no impediment in execution of the decree dated 10.12.2002 and the same became executable. In this view of the matter, the learned Single Judge cannot be said to have erred in dismissing the notice of motion taken out by the appellant for recalling the insolvency notice.

6. In so far as the judgment of the Supreme Court in the case of Sarat Chandra Roy, relied upon by the learned counsel for the appellant, is concerned, the said judgment has no application in the light of the statutory provision contained in section 9A (Maharashtra Amendment) of the Presidency Towns Insolvency Act, 1909.

7. Appeal has no merit and is dismissed in limine.

(R.M. LODHA, J.)

(D.G. KARNIK, J.)